

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

In re:

SMITH DEVELOPMENT, INC.)	Bankruptcy Case No: 09-10078
)	
Debtor)	Chapter 7
)	
)	
MARTIN CONWAY,)	
)	
and)	
)	
PESNER KAWAMATO CONWAY, P.C.,))	Adversary Case No: 21-01020-KHK
)	
Plaintiffs.)	
v.)	
)	
SMITH DEVELOPMENT, INC.,)	
DEBTOR,)	
)	
and)	
)	
JOHN LOPATTO, COUNSEL FOR)	
SMITH DEVELOPMENT, INC.)	
)	
Defendants.)	

**ORDER DENYING DEBTOR SMITH DEVELOPMENT’S MOTION *IN LIMINE* AND
MOTION TO DISMISS**

On March 28, 2021, Debtor Smith Development (“Debtor”) filed a Motion in Limine For Determination of Ultra Vires Conduct of Conway Pesner Eliminating Need for Barton Permission in Case No. 09-10078 at Docket No. 269 (“Motion in Limine”). On April 14, 2021, Debtor and Defendant John Lopatto filed a Motion to Dismiss March 13, 2021 Adversary Complaint of Conway/Pesner in the above-captioned case at Docket No. 13 (“Motion to Dismiss”). On April 15, 2021, Plaintiffs Martin Conway and Pesner Kawamoto Conway, P.C.

(“Conway”) filed their Opposition to Respondent Smith Development, Inc.’s Motion in Limine for Determination of Ultra Vires Conduct of Conway Pesner Eliminating Need for Barton Permission in the above-captioned case at Docket No. 15. On April 19, 2021, Smith Development filed its Reply to Conway/Pesner Opposition to Smith Development Motion in Limine to Declare 2010 Appointment By Court of Conway/Pesner as Special Counsel to Trustee as Void in Case No. 09-10078 at Docket No. 276. On April 21, 2021, Smith Development filed a Statement of Supplemental Authority in Support of Motion in Limine on Unlawful Appointment of Conway Pesner Per 11 U.S.C. § 327 in Case No. 09-10078 at Docket No. 277.

The Court held hearing on April 22, 2021 on Smith’s Motion in Limine and Smith’s Motion to Dismiss. John Lopatto appeared on behalf of Debtor and Robert Jackson Martin appeared on behalf of Conway. Upon review of the briefs (Docket Nos.: 269, 276, and 277 in Case No. 09-10078 and Docket Nos. 13 and 15 in Case No. 21-01020-KHK), arguments of counsel and for the reasons stated on the record, this Court finds as follows:

WHEREAS, Conway was appointed as special counsel under 11 U.S.C. § 327; and

WHEREAS, the arguments raised in Smith’s Motion in Limine and Motion to Dimiss are untimely; it is hereby **ORDERED** that:

1. Smith’s Motion in Limine (Docket No. 269 in Case No. 09-10078) is **DENIED**.
2. Smith’s Motion to Dismiss (Docket No. 13 in Case No. 21-01020-KHK) is **DENIED**.
3. The clerk shall mail copies of this Order or give electronic notice of its entry to the parties listed below.

Date: May 7 2021
Alexandria, Virginia

/s/ Klinette H Kindred
Klinette H. Kindred
United States Bankruptcy Judge

Entered on Docket: May 7, 2021

We ask for this:

/s/ Robert Jackson Martin
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*Counsel for Martin Conway and
Pesner, Kawamoto, Conway, P.C.*

Local Rule 9022-1(C) Certification

The foregoing Order was endorsed by and/or served upon all necessary parties pursuant to Local Rule 9022-1(C).

/s/ Robert Jackson Martin

Copies electronically to:

John Lopatto
Robert Jackson Martin, IV
Danny M. Howell
Martin Conway